A/54/33

United Nations

Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization

General Assembly
Official Records
Fifty-fourth session
Supplement No. 33 (A/54/33)

General Assembly
Official Records
Fifty-fourth session
Supplement No. 33 (A/54/33)

Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization

United Nations • New York, 1999

Note

Symbols of United Nations documents are composed of capital letters combined with figures. Mention of such a symbol indicates a reference to a United Nations document.

ISSN 0255–1276

[Original: English/Russian]
[12 May 1999]

Contents

Chapter		Paragraphs	Page
I.	Introduction	1–11	1
II.	Recommendations of the Special Committee	12	2
III.	Maintenance of international peace and security	13–104	2
	A. Implementation of Charter provisions related to assistance to third States affected by sanctions	13–33	2
	B. Consideration of the working paper submitted by the Russian Federation entitled "Basic conditions and criteria for the introduction of sanctions and other coercive measures and their implementation"	34–69	5
	C. Draft declaration on the basic principles and criteria for the work of the United Nations peacekeeping missions and mechanisms for the prevention and settlement of crises and conflicts	70–82	10
	D. Consideration of the working papers submitted by Cuba at the 1997 and 1998 sessions of the Special Committee entitled "Strengthening of the role of the Organization and enhancing its effectiveness"	83	12
	E. Consideration of the revised proposal presented by the Libyan Arab Jamahiriya with a view to strengthening the role of the United Nations in the maintenance of international peace and security	84–88	12
	F. Consideration of the working paper submitted by the Russian Federation and Belarus	89–104	13
IV.	Peaceful settlement of disputes	105–122	17
	A. Consideration of the revised proposal submitted by Sierra Leone entitled "Establishment of a dispute prevention and early settlement service"	105–108	17
	B. Consideration of the working paper entitled "Revised version of the amendments to the Statute of the International Court of Justice submitted by Guatemala to the Special Committee in 1997 and slightly modified in 1998"	109–116	18
	C. Practical ways and means of strengthening the International Court of Justice while respecting its authority and independence	117–122	20
V.	Proposals concerning the Trusteeship Council	123–128	21
VI.	Identification of new subjects, assistance to working groups on the revitalization of the work of the United Nations and coordination between the Special Committee and other working groups dealing with the reform of the Organization	129–140	22
	A. Identification of new subjects	129–130	22

B. Assistance to working groups on the revitalization of the work of theUnitedNations and coordination between the Special Committee and other working groups dealing with the reform of the Organization 131–132 22

C. Working methods of the Special Committee 133–140 22

Chapter I
Introduction

1. The Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization was convened in accordance with General Assembly resolution 53/106 of 8 December 1998 and met at United Nations Headquarters from 12 to 23 April 1999.

2. In accordance with paragraph 5 of General Assembly resolution 50/52 of 11 December 1995, the Special Committee was open to all States Members of the United Nations.

3. On behalf of the Secretary-General, Jayantha Dhanapala, Under-Secretary-General for Disarmament Affairs, opened the session.

4. Václav Mikulka, Director of the Codification Division of the Office of Legal Affairs, acted as Secretary of the Committee, assisted by the Principal Legal Officer, Sachiko Kuwabara-Yamamoto (Deputy Secretary), and, as assistant secretaries, Vladimir Rudnitsky, Renan Villacis and Arnold Pronto of the Codification Division.

5. At its 227th meeting, on 12 April 1999, the Special Committee, bearing in mind the terms of the agreement regarding the election of officers reached at its session in 1981,[1] and taking into account the results of the pre-session consultations among its Member States, elected its Bureau as follows:

Chairperson:

Marja Lehto (Finland)

Vice-Chairpersons:

Joško Klisović (Croatia)
Saeid Mirzaee Yengejeh (Islamic Republic of Iran)
Augusto Cabrera (Peru)

Rapporteur:

Henry Hanson-Hall (Ghana)

6. The Bureau of the Special Committee also served as the Bureau of the Working Group.

7. Also at its 227th meeting, the Special Committee adopted the following agenda (A/AC.182/L.102):

1. Opening of the session.
2. Election of officers.
3. Adoption of the agenda.
4. Organization of work.
5. Consideration of the questions mentioned in General Assembly resolution 53/106 of 8 December 1998, in accordance with the mandate of the Special Committee as set out in that resolution.
6. Adoption of the report.

8. At its 227th meeting, the Special Committee also established a Working Group of the Whole for its work and agreed on the following organization of work: proposals relating to the maintenance of international peace and security (nine meetings); proposals regarding the peaceful settlement of disputes between States (four meetings); proposals concerning the Trusteeship Council (one meeting); the question of identification of new subjects, assistance to working groups on the revitalization of the work of the United Nations and coordination between the Committee and other working groups dealing with the reform of the Organization (one meeting); and the consideration and adoption of the report (three meetings). The distribution of meetings would be applied with the necessary degree of flexibility, taking into account the progress achieved in the consideration of the items. General statements touching upon all or several items were made prior to the consideration of each of the specific items in the framework of the Working Group.

9. General statements touching upon all items or upon several of them were made prior to the consideration of each of the specific items in the Working Group. The substance of those general statements is reflected in the relevant sections of the report.

10. With regard to the question of the maintenance of international peace and security, the Special Committee had before it the report of the Secretary-General entitled "Implementation of provisions of the Charter related to assistance to third States affected by the applications of sanctions" (A/53/312); a revised working paper submitted by the Russian Federation at the 1997 session of the Committee, entitled "Some ideas on the basic conditions and criteria for imposing and implementing sanctions and other enforcement measures" (A/AC.182/L.94);[2] a working paper submitted by the Russian Federation at the 1998 session of the Committee, entitled "Basic conditions and criteria for the introduction of sanctions and other coercive measures and their implementation" (A/AC.182/L.100);[3] a working paper submitted by the Russian Federation at the 1996 session of the Committee, entitled "Draft declaration on the basic principles and criteria for the work of United Nations peacekeeping missions and mechanisms for the prevention and settlement of crises and conflicts" (A/AC.182/L.89);[4] an informal working paper submitted by the Russian

Federation at the 1997 session of the Committee, entitled "Some views on the importance of and urgent need for the elaboration of a draft declaration on the basic principles and criteria for the work of United Nations peacekeeping missions and mechanisms for the prevention and settlement of crises and conflicts" (A/AC.182/L.89/Add.1);[5] a working paper also submitted by the Russian Federation at the 1998 session of the Committee, entitled "Fundamentals of the legal basis for United Nations peacekeeping operations in the context of Chapter VI of the Charter of the United Nations" (A/AC.182/L.89/Add.2 and Corr.1);[6] a working paper submitted by the delegation of Cuba at the 1998 session of the Committee, entitled "Strengthening the role of the Organization and enhancing its effectiveness"(A/AC.182/L.93/Add.1);[7] a revised proposal also submitted at the 1998 session by the Libyan Arab Jamahiriya with a view to strengthening the role of the United Nations in the maintenance of international peace and security (A/AC.182/L.99);[8] and a working paper submitted by the Russian Federation containing a draft resolution of the General Assembly and a revision thereof (A/AC.182/L.104 and Rev.1; see paras. 89 and 101 below).

11. With regard to the topic "Peaceful settlement of disputes between States", the Special Committee had before it a revised proposal, entitled "Establishment of a dispute prevention and early settlement service" (A/AC.182/L.96), submitted by Sierra Leone at the Committee's 1997 session and orally revised at the 1998 session.[9] The Committee also had before it a proposal by the delegation of Guatemala submitted at the 1998 session, entitled "Draft of a questionnaire addressed by the General Assembly to States regarding the proposal to extend the jurisdiction of the International Court of Justice in contentious cases to disputes between States and intergovernmental organizations" (A/AC.182/L.101);[10] a working paper submitted by the delegation of Guatemala, entitled "Revised version of the amendments to the Statute of the International Court of Justice submitted by Guatemala to the Special Committee in 1997 and slightly modified in 1998" (A/AC.182/L.103 and Corr.1; see para. 109 below); and a working paper submitted by Mexico (A/AC.182/L.105; see para. 117 below).

Chapter II
Recommendations of the Special Committee

12. The Special Committee submits to the General Assembly:

(a) As regards the question of the implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions under Chapter VII of the Charter, the recommendations contained in paragraphs 32 and 33 below;

(b) As regards the question of practical ways and means of strengthening the International Court of Justice while respecting its authority and independence, the recommendation contained in paragraph 122 below.

Chapter III
Maintenance of international peace and security

A. Implementation of Charter provisions related to assistance to third States affected by sanctions

13. Delegations emphasized the paramount importance that they attached to the topic. It was noted that, although the Charter empowered the Security Council to impose sanctions under Chapter VII, the Charter did not intend adverse consequences to third States to remain unattended. In this regard, the point was made that the Special Committee had the responsibility of making proposals on the means to address the matter. Some delegations were of the view that the Council had the responsibility of mitigating the damage incurred by third States.

14. The view was expressed that, although progress had been made in the consideration of the topic and that procedures and working methods of the Security Council and its sanctions committees had improved, measures were still required to fully implement Article 50 of the Charter. This would contribute to an effective approach by the international community which could help sanctions regimes to attain their objectives. The point was made that, at all stages, States adversely affected by the imposition of sanctions should be allowed to consult with the Council.

15. All delegations welcomed the report of the Secretary-General on the implementation of provisions of the Charter related to assistance to third States affected by the application of sanctions (A/53/312). This report contained the conclusions and a summary of deliberations and main findings of the ad hoc expert group meeting, held in New York from 24 to 28 June 1998, concerning the development of a possible methodology for assessing the consequences actually incurred by third States as a result of preventive or enforcement measures and the exploration of innovative and

practical measures of international assistance that could be provided to said third States. It was indicated that the Secretary-General's report should continue to be the subject of careful study.

16. Some delegations stressed the importance of the recommendation whereby the Security Council would request an advance assessment of the potential effect of sanctions on both the target country and upon third States before adopting a resolution under Chapter VII of the Charter.

17. Delegations also voiced their support for entrusting the Secretariat with the task of monitoring the effects of sanctions once they had been imposed. In this regard, the view was expressed that concerned third States needed to be involved in any impact assessment of the imposition of sanctions, since they had the clearest idea of how detrimental said effects could be.

18. Support was expressed by some delegations for the suggestion of the ad hoc expert group to apply, for the purpose of mitigating adverse effects of sanctions on non-targeted States, funding procedures similar to those adopted for peacekeeping operations, which deserve in-depth study and further implementation.

19. Some delegations expressed their support for the emphasis placed by the ad hoc expert group on applying the concept of burden-sharing and equitable distribution of costs with regard to carrying out preventive or enforcement measures. It was suggested that the establishment of appropriate and adequately financed permanent mechanisms within the United Nations system would be useful in finding a solution with respect to addressing the special economic problems of third States. Other delegations were of the view that it would be premature to establish any permanent mechanism and that preference should be given to proceeding with a step-by-step approach.

20. The need for the establishment of a fund, based on assessed contributions, to rapidly assist third States adversely affected by sanctions was noted. The view was expressed that a case-by-case consideration by the international financial institutions was not realistic and that this highlighted the need for a permanent mechanism to be set up that would involve not only said institutions but also the United Nations and the affected third States. The point was also made that the establishment of such a fund was an idea that required further consideration by the Special Committee, and that there were practical impediments to the establishment of such a fund.

21. As indicated by the ad hoc expert group, the role that international financial and trade institutions could play was considered pivotal, both in assessing the adverse consequences for third States resulting from the imposition of sanctions and in providing assistance. The point was made that the international financial institutions should consider establishing new mechanisms to provide emergency financial assistance to affected third States.

22. The view was expressed that the United Nations should nonetheless remain a focal point in coordinating activities undertaken in the implementation of Article 50 by the institutions both within and outside the United Nations system and assume primary responsibility for non-financial matters. The point was also made that, irrespective of the role to be played by the international financial and trade institutions, the responsibility of the Security Council still had to be addressed since the above-mentioned international institutions operated under their own mandate and had different priorities. The view was expressed that it is necessary to take into account the fact that the primary responsibility for the maintenance of international peace and security was borne by the Security Council.

23. It was noted that the hardships resulting from the imposition of economic embargoes and trade sanctions were particularly acute for developing countries. Satisfaction was expressed at the recognition by the ad hoc expert group of the impact that the imposition of sanctions could have regarding the remittances of migrant workers.

24. It was stressed that there was a link between sanctions and the necessity of assistance to third States affected by the application of sanctions under Chapter VII. Delegations emphasized the need to minimize the humanitarian and economic impact of sanctions on third States, and the human impact on targeted States, while at the same time enhancing the effectiveness of the sanctions regime. It was noted that a range of sanctions, including targeted sanctions, could be of use depending upon particular circumstances. The view was expressed that the ideas and suggestions raised during the two expert seminars on targeted financial sanctions, held in Interlaken, Switzerland, and a symposium on Security Council targeted sanctions, held in New York, merited consideration. In that context, one delegation expressed its willingness to host an expert group meeting in the field of arms embargo.

25. The view was also expressed that there was a need for non-financial measures, such as special trade preferences, tariff adjustments, quota allocations and special commodity purchase agreements, as well as finding new markets, providing greater access to markets for goods from affected third States or lowering tariffs on said goods, in order to ameliorate the adverse effects that sanctions had upon third States.

26. Some delegations deemed it appropriate for the sanctions committees established by the Security Council to make the arrangements necessary to listen to the views of representatives of the affected States. The point was made that the sanctions committees could also be entrusted with conducting research on the adverse economic, social and political effects of sanctions upon third States and targeted States. In reply to a query made by a delegation, the Secretariat indicated that all sanctions committees were aware of the note by the President of the Security Council on the work of the sanctions committees,[11] that each one would, in due course, proceed to implement the provisions contained therein and that any relevant information concerning further developments in this regard, if any, would be included in the report of the Secretary-General to the General Assembly.

27. Delegations supported the view that the Secretariat should provide technical assistance to the affected third States in the preparation of explanatory materials to be attached to their requests for consultations with the Security Council on the basis of Article 50.

28. Some delegations considered as commendable the proposal by the ad hoc expert group that, in some severe cases, the Secretary-General appoint a Special Representative to undertake, in collaboration with the Governments concerned, a full assessment of the consequences actually incurred by the specially affected countries as a result of carrying out the United Nations-imposed sanctions. It was stated that the recommendation of appointing a Special Representative of the Secretary-General or dispatching a fact-finding mission to carry out impact assessments needed careful consideration, especially with regard to a possible mandate.

29. The view was expressed that the report of the ad hoc expert group constituted a sufficient basis for implementing Article 50 and that, in addition to the proposals made in the Sixth Committee regarding the above-mentioned report, it was also necessary to take into account the views of States in the Special Committee, the Economic and Social Council and the international financial and trade institutions.

30. Some delegations were of the view that the Special Committee could endorse the proposals and recommendations of the ad hoc expert group report, while other delegations felt that only some of those proposals and recommendations should be endorsed. The view was expressed that an in-depth discussion of said recommendations should take place within a working group of the Sixth Committee. The view was also expressed that additional measures, such as the establishment of a standing Security Council sanctions committee, could also be considered by the Special Committee.

31. Other delegations voiced their concern that the time was not right to implement the recommendations of the ad hoc expert group's report. In this regard, it was suggested that the Secretary-General be invited to present his views on the detailed suggestions of the experts, in particular their political, financial and administrative feasibility. It was also pointed out that the General Assembly, in its resolution 53/107 of 8 December 1998, had requested the Secretary-General to seek the views of States, the organizations of the United Nations system, international financial institutions and other international organizations regarding the report of the ad hoc expert group meeting.

32. The Special Committee welcomed the report of the Secretary-General summarizing the deliberations and main findings of the ad hoc expert group convened pursuant to General Assembly resolution 52/162 of 15 December 1997 on the question of developing a methodology for assessing the consequences incurred by third States as a result of preventive or enforcement measures and on exploring innovative and practical measures of international assistance to be provided to the affected third States (A/53/312), and recommended that at its fifty-fourth session the Assembly continue to consider, in an appropriate substantive manner and framework, the results of the ad hoc expert group meeting, taking into account the relevant debate in the Committee at its 1999 session, the views of States, the organizations of the United Nations system, international financial institutions and other relevant international organizations, as contained in the report of the Secretary-General to be submitted pursuant to Assembly resolution 53/107, and to address further the question of the implementation of the provisions of the Charter relating to assistance to third States affected by the application of sanctions under Chapter VII of the Charter and the implementation of Assembly resolutions 50/51, 51/208, 52/162 and 53/107, taking into account all reports of the Secretary-General on this subject and the text on the question of sanctions imposed by the United Nations contained in annex II to General Assembly resolution 51/242 of 15 September 1997, as well as the proposals presented and the views expressed in the Committee.

33. Following its deliberations, the Special Committee recommended that the General Assembly invite the Secretary-General to submit to it at its fifty-fourth session a report concerning the deliberations and main findings of the ad hoc expert group on implementation of provisions of the Charter related to assistance to third States affected by the application of sanctions (see A/53/312, sect. IV), and to

provide relevant information, where appropriate, on other developments in this context, particularly on the work of the sanctions committees as referenced in the note by the President of the Security Council.[11]

B. Consideration of the working paper submitted by the Russian Federation, entitled "Basic conditions and criteria for the introduction of sanctions and other coercive measures and their implementation"

34. During the general debate held during the Special Committee's 227th meeting, on 12 April, the sponsor delegation, the Russian Federation, referred to the working paper entitled "Basic conditions and criteria for the introduction of sanctions and other coercive measures and their implementation".[3] It noted with satisfaction that an initial paragraph-by-paragraph consideration of the working paper had been undertaken at the previous session of the Committee and that the resultant debate had demonstrated a stronger intention on the part of Member States towards a more balanced approach to the application and implementation of sanctions. It was observed that any recommendations in this field made by the Committee could contribute significantly to the Security Council's consideration of matters related to sanctions and could be a step forward in the implementation of relevant General Assembly resolutions.

35. At the same meeting, support was expressed for the proposal, and the view was expressed that sanctions were by their nature an extreme measure, which should be utilized with caution and only once all other means of peaceful settlement of disputes had been exhausted. Similarly, sanctions required concrete goals, and their effects should be reviewed continuously. It was observed that open-ended sanction regimes were not envisaged by the Charter. Reference was made to the fact that the topic had been the subject of consideration in other forums within the United Nations, in particular in regard to the adoption of General Assembly resolution 51/242, and hence that the possibility of duplication of effort should be avoided. In this regard, it was proposed that the consideration of the working paper be focused on those aspects that had not been examined elsewhere.

36. Consideration of the proposal during the current session commenced at the 2nd meeting of the Working Group, on 13 April, at which time the view was expressed that the reservations raised at the previous session of the Special Committee[12] still applied. In particular, concern was expressed regarding the usefulness of the proposal in question, as well as its propriety under the Charter.

37. At the same meeting, the Chairperson proposed continuing the paragraph-by-paragraph consideration of the working paper on the same basis as at the previous session of the Special Committee, that is, on the understanding that the reading was in the nature of a preliminary discussion only and that silence should not be taken to signify agreement. Support was expressed in the Working Group for that approach. The Working Group undertook the first reading of the working paper, on the above understanding, from its 2nd to 5th meetings, on 13 and 14 April.

Paragraph 5

38. In introducing paragraph 5, the sponsor delegation commented on the practice of recent years whereby States were implementing sanctions and other coercive measures in addition to sanctions imposed by the Security Council. In this regard, it was observed that such additional sanctions or measures were not envisaged by the Charter and that it was imperative that States abide by the existing legal bases for sanctions.

39. Opposing views were expressed regarding the propriety of including the provision. Hence, the view was expressed that the reference in paragraph 5 to "sanctions" was misleading, as it was referring to measures undertaken by States in exercise of their sovereign right to trade with whomever they wished. Another view put forward was that a distinction should be drawn between Charter-based sanctions and sanctions imposed unilaterally, and that unilateralism in the international system should be rejected.

40. The concern was raised that the paragraph was presented in absolute terms, which raised questions as to its legal accuracy. In this regard, it was observed that Article 41 of the Charter was formulated in such a manner as not to preclude the Security Council from imposing other non-specified measures. As such, it was not clear that States would be precluded from adopting other measures. Therefore, the suggestion was made to recast paragraph 5 so as to allow flexibility while at the same time requiring Member States to not implement measures that conflict with the Charter. In response to this intervention, the sponsor delegation commented that paragraph 5, as presently formulated, did not impede the adoption of retortion and other measures permitted under international law. Reference was also made in this regard to the existence of a "sanctions syndrome" in the international system, which has led to the

proliferation in the number and scope of sanctions, with dire consequences both for targeted and third States.

Paragraph 6

41. In introducing the paragraph, the sponsor delegation stressed the importance of the resort to peaceful means for the settlement of disputes, which is an obligation imposed by the Charter on all Member States. While the selection of the means to be used is left up to the States involved, in its view it is a fundamental principle of international law that these have to be resorted to before the imposition of extreme measures such as sanctions.

42. While support was expressed for the provision under consideration, its deletion was also recommended, since it seemed to make reference to the underlying dispute that gave rise to the imposition of sanctions. Similarly, while not expressly disagreeing with the concept contained in paragraph 6, the view was expressed that the paragraph may overlap with annex II to resolution 51/242 and was therefore redundant and could be deleted. The sponsoring delegation called for a well-balanced approach, whereby exhaustive use of existing means of settling disputes are resorted to prior to the implementation of such measures.

43. On the question of the formulation of the provision, the view was expressed that, while the spirit of the proposal could be supported, an absolute formulation making the prior resort to peaceful settlement of disputes a sine qua non for the imposition of sanctions would be too inflexible in practice, as there may be occasions when sanctions would have to be resorted to immediately, and that it would go further than Article 40 of the Charter, which is formulated in permissive terms. Hence, it was suggested that the provision could benefit from further clarification as to its scope of application. In response, the sponsor delegation stated that while reprisal measures consistent with the Charter are permissible under international law, measures such as sanctions that are not linked to a threat to the peace, a breach of the peace or an act of aggression should not be characterized as retortion and other measures, but rather should be understood as "coercive measures" contemplated in paragraph 5 of the provision under consideration.

44. It was further noted that the provision could be read to imply that peaceful means for the settlement of disputes need not be resorted to once sanctions had been imposed, which would run contrary to the provisions of the Charter. Mention was also made of the fact that the provision did not distinguish between economic sanctions and other measures such as arms embargoes. A reservation was also expressed regarding the reference in the last part of the paragraph to "up until the time when the need may arise for the introduction of sanctions by the Security Council". Since it is permissible to resort to sanctions at any time as long as they are consistent with international law, it was suggested that the last part be deleted.

Paragraph 7

45. In introducing the paragraph, the sponsor delegation noted that sanctions imposed with the objective of overthrowing an existing regime or governmental structure were not in conformity with the purposes of the Charter. The provision attracted support in the Working Group, where it was noted that the paragraph was in conformity with Article 2, paragraph 7, of the Charter and was in keeping with numerous General Assembly resolutions, including resolution 2625 (XXV) of 24 October 1970, to which is annexed the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter.

46. Some delegations noted that, while supporting the provision, it could be strengthened through a more positive formulation. In this connection, reference was made to annex II to resolution 51/242, which had been adopted by consensus. As such, the provision under consideration could be improved by having its formulation aligned more closely to the text in annex II.

47. In commenting on the remarks made in the Working Group, the sponsor delegation pointed to the new generation of intra-State conflicts, which presented special difficulties for the international community, including ascertaining the legal status of parties and the lawfulness of their actions. As such, the provision under consideration instead strove to place the emphasis on the peaceful settlement of such disputes.

Paragraph 8

48. In introducing the paragraph, the sponsor delegation noted that sanctions should not result in financial or material harm to third States. Conversely, third States should also not profit from sanctions imposed on other States. While support was expressed for the inclusion of the provision, it was stated that the provision overlapped with the Special Committee's current work on the implementation of Charter provisions related to assistance to third States affected by sanctions. Clarification was sought from the sponsor delegation as to the exact relationship between the provision and Article 50. Similarly, reference was made to the position of the Movement of Non-Aligned Countries in regard to sanctions, in particular regarding the establishment of a

mechanism, including a fund, to provide relief to third States affected by United Nations sanctions.

49. The view was expressed in the Working Group that while "smart" sanctions were preferable, the provision under consideration was too categorical in its approach. It was noted in this regard that Article 50 provided for consultation in cases where the effects of sanctions on a particular State spilled over to third States. However, paragraph 8 went further than this by stipulating that such a situation was not "permissible", and would thus constitute a de facto amendment to the Charter. This observation was supported in the Working Group, at which time it was noted that making sanctions dependent on the non-existence of harm to third States would be contrary to Article 50.

Paragraph 9

50. The sponsor delegation made reference to recent practice regarding the imposition of additional conditions on targeted States, thereby impeding or rendering impossible their compliance with the provisions of the Security Council resolutions in question. The observation was made that the sponsor delegation, in its introduction to the provision, had made reference to an element that was not apparent in the text under consideration and that this additional element, namely, that the imposition of additional conditions be exclusively reserved for the Security Council, should be expressly included in the provision.

Paragraph 10

51. In introducing the paragraph, the sponsor delegation noted the excessively destructive nature of some sanctions, resulting in the impoverishment of entire nations. During the debate on the provision, reference was made to the overlap between the provision and other existing texts. Hence, a delegation, in supporting the inclusion of the provision, made reference to the recommendations contained in paragraphs 51 and 52 of the report of the Secretary-General on the implementation of provisions of the Charter related to assistance to third States affected by the application of sanctions (A/53/312). Support was expressed in the Working Group for the inclusion of a reference to those recommendations in paragraph 10. The Working Group's attention was also drawn to paragraph 16 of the note by the President of the Security Council dated 29 January 1999,[12] whereby special exemptions for the importation of necessary foodstuffs, pharmaceuticals and medical supplies were foreseen. Likewise, reference was made to the overlap between paragraph 10 and the corresponding provisions of annex II to resolution 51/242. In this regard, it was remarked that if the Special Committee still deemed the inclusion of the provision to be necessary, its interrelationship with those provisions would have to be clarified. It was further noted that the idea behind this instrument was to establish a general regime on sanctions. As such, the inclusion of provisions duplicating those found elsewhere did not necessarily cause any difficulties.

52. A preference was expressed in the Working Group for a comprehensive approach that would require the evaluation to be undertaken both before and during the sanctions so as to ensure continuous monitoring. The sponsor delegation commented that when making the decision to impose sanctions, the Security Council should have at its disposal information regarding both the short- and long-term impact of those sanctions. The suggestion was made that the paragraph could be further improved through the introduction of an element recognizing the need for the Secretariat to be able to respond adequately and in an impartial and objective manner.

53. In the view of another delegation, while it agreed in principle with the thrust of the provision, especially with regard to the need to constantly monitor the impact of sanctions, account should also be taken of the need to act on short notice. Therefore, the provision could have been improved through the inclusion of a further element that would introduce sufficient flexibility to respond to events on the ground. While noting the proposal, the sponsor delegation indicated that it would largely depend on the ability of the Secretary-General to respond in a timely manner, but that in any case a decision to impose sanctions under the Charter should be taken by the Security Council.

54. A further proposal was made to add, either as a new paragraph 11 or as an additional sentence to paragraph 10, the requirement that, following the assessment contemplated in the provision, appropriate arrangements for the provision of assistance to States affected by sanctions should be provided, in accordance with Article 50 of the Charter.

Section II, paragraph 1

55. In introducing paragraph 1 of section II of the working paper, the sponsoring delegation observed that it was intended to stress the importance of the "humanitarian limits" of sanctions. It was also observed that the provision required the Security Council to take into account humanitarian considerations, which were more pressing during times of peace than in times of war. Opposing views were expressed in the Working Group regarding the value of retaining the provision in question. On the one hand, the observation was made that the proposal ignored the fundamental nature of the security mechanism, as well as the

fact that sanctions were only imposed following the finding of a threat to the peace. As such the paragraph could cause confusion. Alternatively, it was observed that the provision flowed from the very objective of sanctions, which was not to exact punishment but to modify the behaviour of a party that was threatening international peace and security. A reference to annex II to resolution 51/242 was made in support of this assertion. Hence, taking into account the humanitarian limits of sanctions clearly fell within the ambit of the working paper.

56. While supporting the provision, others also suggested modifications to its formulation. In particular, concerns were expressed regarding the reference in the last phrase of the paragraph to humanitarian considerations being "even more pressing in time of peace than in time of war". It was noted in this regard that the provision should not be formulated in such a manner as to lessen the importance of humanitarian considerations during times of war, which is reflected, *inter alia*, in the Geneva Conventions of 1949. Therefore the proposal could benefit from having the concluding phrase either deleted or reformulated to state that such considerations were "equally pressing in time of peace as in time of war". As an alternative, it was suggested that the reference could be placed in the heading of section II. Furthermore, if it were to be retained in the provision, the more appropriate term "in time of armed conflict" as opposed to "in time of war" would have to be utilized. In response, the sponsor delegation noted that the provision was formulated to take account of the re-emergence of inter-ethnic and linguistic conflicts and those based on faith, which typically resulted in a much higher proportion of civilian casualties. It was observed that these conflicts took place during times of peace and should be solved by internal means.

57. The observation was also made in the Working Group that the international community continued to make efforts towards the goal of imposing "smart" sanctions. It was noted in this regard that, while the provision tended to contemplate the imposition of comprehensive sanctions, the emerging trend towards the adoption of such sanctions rendered the provision less necessary in practice.

Paragraphs 2 and 3

58. With a view to expediting the first reading of the working paper, the Working Group, at its 5th meeting on 14 April, decided to undertake its consideration of the remaining paragraphs in groups of two, beginning with paragraphs 2 and 3. In introducing paragraph 2, the sponsor delegation noted that it had become a standard feature of existing texts. As to paragraph 3, the sponsor delegation remarked that the provision reflected the emerging concern that many sanctions imposed during the 1990s had led to famine and excessive suffering. General support for both provisions was expressed in the Working Group.

59. Regarding paragraph 2, while one delegation expressed strong support for its inclusion, citing its own current experience under the sanctions regime imposed on it by the Security Council, several suggested improvements to paragraph 2 were made during the debate. Hence, it was noted that sanctions in themselves did not violate human rights, nor did they relieve States of their duty to ensure the enjoyment of human rights. In this regard, reference was made to General Comment No. 8 (1997) of the Committee on Economic, Social and Cultural Rights,[13] which confirmed that, following the imposition of sanctions, the targeted State remains under an obligation to ensure the absence of discrimination in relation to the enjoyment of rights enshrined in the International Covenant on Economic, Social and Cultural Rights (General Assembly resolution 2200 A (XXI) of 16 December 1966, annex). At the same time, in imposing sanctions, the Security Council is obliged to take steps to respond to any disproportionate suffering experienced by vulnerable groups within the targeted country. The remark was also made that care should be taken to ensure full compatibility with General Comment No. 8 as well as the provisions of article 4 of the International Covenant on Civil and Political Rights (ibid.). Furthermore, the paragraph could also be improved by having the various rights contained therein formulated in terms of rights recognized in the Universal Declaration of Human Rights (General Assembly resolution 217 A (III) of 10 December 1948) and in the Covenants.

60. Furthermore, the observation was made that the provision could take into account the distinction between general sanctions, which may affect certain rights, and specific sanctions, such as a ban on flights to and from the target State, which do not. It was also proposed that the absolute nature in which the provision was formulated be attenuated. It was further stated that the provision could be improved through the deletion of the reference to "fundamental" human rights so that it would apply to all rights equally.

61. As to paragraph 3, the comment was made that the provision could fall within section I and that it could benefit from being reformulated in less absolute terms. The merger of paragraphs 3 and 4, taking into account the note by the President of the Security Council,[12] was also suggested. The observation was made that while sanctions may not themselves be targeted at civilian populations, their implementation may have repercussions for such

populations. It was thus proposed to reformulate the beginning phrase to read "[t]he adoption of decisions and the implementation of sanctions should not create situations which would ...".

Paragraphs 4 and 5

62. In introducing paragraph 4, the sponsor delegation remarked that it was axiomatic that sanctions cannot be open-ended and that they should be subject to periodic adjustments. Furthermore, in regard to paragraph 5, it noted the importance of suspending sanctions in order to avert a humanitarian disaster arising out of an emergency situation or a *force majeure*. It was proposed that paragraph 4 be linked to paragraph 3 of section I, particularly in regard to specifying time limits for the duration of sanctions. It was noted that the issue was related to the question of the exercise of the veto power and the resultant limitation on the undertaking of periodic reviews that may arise.

Paragraphs 6 and 7

63. In introducing paragraph 6, the sponsor delegation stressed the importance of the basic principles of impartiality and neutrality in providing humanitarian assistance. With regard to paragraph 7, it referred to situations in which intervention, ostensibly to avert a humanitarian disaster, may have the opposite effect, resulting in an exacerbation of the situation. Particular reference was made to situations in which the infrastructure of a State breaks down.

64. In connection with paragraph 6, clarification was sought regarding who would have to ensure unimpeded access to humanitarian assistance. In particular, concern was expressed that the provision might be interpreted as placing that obligation solely on the Security Council, while not adequately covering a situation in which the Government of the targeted State prevents assistance from reaching certain sectors of its population. In response, the sponsor delegation pointed to the numerous international organizations and other bodies and entities involved in the provision of humanitarian assistance and stressed the importance of not interfering with their operational procedures and the inadmissibility of using armed force in the provision of humanitarian assistance, which might paralyse the work of international humanitarian organizations and institutions or nullify such activities.

65. As to paragraph 7, clarification was likewise sought regarding the difference between paragraphs 3 and 7, since the first part of the provision seemed to be reflected in paragraph 3. In this regard, the sponsor delegation observed that, while paragraph 3 established the inadmissibility of causing excessive suffering to the civilian population, paragraph 7 was broader, as it covered situations in which the imposition of measures resulted in the breakdown of the infrastructure of the State.

Paragraphs 8 and 9

66. In commenting on paragraph 8, the sponsor delegation noted the importance of taking into consideration the views of international humanitarian organizations when planning and imposing sanctions. Regarding paragraph 9, it noted that international humanitarian organizations should be given a chance to fulfil their respective mandates. Concerning both paragraphs, it was observed that the issues covered in paragraphs 5 to 11 had already been covered in other instruments, notably resolution 51/242 and the note by the President of the Security Council.[12] As such, the paragraph should take the provisions of those texts into account. A further suggestion was made to switch paragraphs 6 and 7 around, so as to allow for better consistency in the drafting of the proposal.

Paragraphs 10 and 11

67. With regard to paragraph 10, the sponsor delegation referred to the importance of ensuring that a permissive system be established for the simplification of the delivery of humanitarian supplies as well as the exclusion of medical supplies and staple food items from the scope of the sanctions regime. In commenting on paragraph 11, it noted that the principles in question, namely impartiality and non-discrimination, were the basis upon which the activities of humanitarian organizations are carried out.

68. While support for paragraph 11 was expressed in the Working Group, it was noted that the paragraph was redundant, given paragraph 6, and therefore the working paper could be improved upon by having both provisions amalgamated into one. A similar comment was made to the effect that the explanation given for paragraph 6 by the sponsor delegation was more appropriate for paragraph 11. As such, the deletion of existing paragraph 6 and its replacement with the text in paragraph 11 was suggested. In reaction, the sponsor delegation remarked that this proposal could be considered in the context of the proposal to amalgamate paragraphs 6 and 11.

69. The view was expressed as to the necessity of further deliberations on the document, taking into account the views expressed at the first reading, and the preparation of a revised draft for the second reading at the next session of the Special Committee.

C. Draft declaration on the basic principles and criteria for the work of United Nations peacekeeping missions and mechanisms for the prevention and settlement of crises and conflicts

70. At its 6th, 7th and 10th meetings, on 15 and 20 April, the Working Group of the Special Committee considered both general and specific aspects of the working paper entitled "Fundamentals of the legal basis for United Nations peacekeeping operations in the context of Chapter VI of the Charter of the United Nations" (A/AC.182/L.89/Add.2 and Corr.1),[6] submitted by the delegation of the Russian Federation at the 1998 session of the Special Committee.

71. The sponsor delegation, in its introductory statement, pointed out that recent attempts by some Member States to bypass the Charter obligations concerning peacekeeping operations made it necessary to reaffirm the importance of the Charter as a basis for peacekeeping operations. Recent events also underscored the key role of the Security Council as the only organ authorized to adopt decisions regarding the application of coercive measures in the interests of the entire international community. In this connection, the sponsor delegation reiterated that the aim of the proposal was to improve United Nations peacekeeping operations by elaborating the legal basis of those operations. Owing to the multifaceted nature of the issue, it was suggested that the focus first be on the development of a legal framework of the peacekeeping missions carried out with the consent of States in the context of Chapter VI of the Charter. The working paper identified key elements of said legal framework as a basis for the discussion, which included a clear definition of the mandate of peacekeeping operations, including humanitarian assistance; establishing the limits to the peacekeepers' right to self-defence, while strengthening their protection; analysing the mechanism of apportioning responsibility between the United Nations and troop-contributing States for the damage caused in the course of peacekeeping operations; and specifying basic principles of peacekeeping, including the principles of neutrality, impartiality and non-interference in the internal affairs of States parties to the conflict. The sponsor delegation suggested that the Special Committee start a paragraph-by-paragraph discussion of the proposal, bearing in mind the possibility of making contacts, for purposes of coordination, with other United Nations bodies engaged in the work on the practical aspects of peacekeeping operations.

72. Some delegations pointed out that the work of the Special Committee should not duplicate that of other bodies established by the General Assembly, such as the Special Committee on Peacekeeping Operations, the Fifth Committee and the First Committee. They reiterated the view that the issues raised in the proposal fell within the mandate of such other bodies. It was suggested that the Special Committee on Peacekeeping Operations, in particular, was considering legal issues on peacekeeping relevant to the proposal in question. In this connection, it was proposed that the Special Committee on the Charter should make a recommendation that the item under discussion should be referred to the Special Committee on Peacekeeping Operations for its consideration. A point was made in this regard that the proposed recommendation could become a decision only if it was approved by the Assembly.

73. A suggestion was also made to invite the views of the Fifth Committee on the advisability of the Special Committee's consideration of matters that were closely related to the work of the Fifth Committee. It was further suggested that there was a need first to establish what had already been achieved by other bodies in relevant areas, and that the findings should be properly reflected in the proposal by the sponsor. A suggestion was also made to invite the Chairman or the secretariat of the Special Committee on Peacekeeping Operations to inform the Special Committee on the Charter of its activities that might be relevant to the proposal under consideration and to comment on a possible duplication of work between the Special Committee on the Charter and the Special Committee on Peacekeeping Operations. In response to the latter suggestion, the secretariat of the Special Committee on the Charter informed the delegations that, owing to the fact that the Special Committee on Peacekeeping Operations was currently in session, the requested information could be made available to the Sixth Committee during the fifty-fourth session of the General Assembly, in connection with its consideration of the report of the Special Committee on the Charter. It was also stated that the contacts with the secretariat of the Special Committee on Peacekeeping Operations suggested that there might be some overlap in the work of that body and that of the Special Committee on the Charter. In this connection, the Secretariat drew the attention of delegations to the 1998 report of the Special Committee on Peacekeeping Operations (A/53/127, paras. 47–52).

74. Reservations were also expressed on the substance as well as the usefulness of the proposal. A point was made that while the issue of elaborating the legal principles for peacekeeping operations might have had some relevance in the cold war period, such an undertaking at the present time could not be justified, since various questions that had been raised had largely been dealt with through international practice. As regards the substance, clarifications were sought

regarding the linkage of the proposed legal elements to specific parts of the Charter, the legal basis for determining the budget of peacekeeping operations and the meaning of the principles of neutrality and impartiality as applied to peacekeeping operations.

75. Some other delegations were of the view that the proposal was a useful and timely initiative aimed at providing a consolidated legal framework necessary for the effective functioning of the United Nations in areas of peacekeeping and conflict prevention in the new conditions of a multipolar world. They were of the view that the proposal was entirely within the mandate of the Committee and favoured a detailed consideration of the proposal. The view was also expressed that no such duplication between the work of the Special Committee on the Charter and that of the Special Committee on Peacekeeping existed because the latter did not deal with legal aspects of peacekeeping.

76. With regard to the general aspects of the proposal, the need for a more frequent recourse to Chapter VI of the Charter in the context of peacekeeping was underscored. The point was made that the success of peacekeeping operations depended on the clear definition of their mandate, command structure and rules of engagement, and their authority to address the root causes of situations. Caution was urged against the imposition of arbitrary rules on such operations after their establishment. The view was expressed that once a peacekeeping operation was established, there should be no restriction, limit or arbitrary "sunset" clauses imposed on it. Another view expressed was that a decision on the mandate establishing a peacekeeping operation should not be indefinite in nature and that a peacekeeping operation should be conducted within the time limits determined by the Security Council. It was suggested that peacekeeping operations should be strictly based on the norms and principles of the Charter, such as non-interference in the affairs of the States concerned, a respect for sovereignty of States and impartiality. It was also remarked that all peacekeeping operations should be approved by the Security Council and conducted in accordance with the mandate established by the Council. The view was also expressed that States that had contributed contingents to peacekeeping operations should bear responsibility if peacekeepers went beyond their mandate and caused damage. It was suggested that, in the course of elaborating a legal framework of peacekeeping operations, proper account should be taken of the need for coordinating activities of the United Nations with those of regional organizations. It was noted that guidelines for peacekeeping should be supplemented by a mechanism allowing for flexibility in their application so as to respond to the specificity of each conflict or situation. Suggestions were also made to promote universal participation in the 1994 Convention on the Safety of United Nations and Associated Personnel (General Assembly resolution 49/59 of 9 December 1994, annex) and its implementation both by States and by non-State actors, as well as extending its scope to cover national personnel associated with peacekeeping operations.

77. Some delegations, commenting on specific elements of the proposal, stressed that any future revision of the proposal should take into account such issues as vulnerability to the right of veto of decision-making by the Security Council; the ambiguity of peacekeeping mandates due to the increased complexity of peacekeeping tasks as well as the expanding scope and duration of operations; and identification of the conditions for launching operations in situations arising from both inter- and intra-State conflicts. It was further suggested that guidelines for operations be developed that could apply to cases in which a ceasefire was violated; there was only a partial consent of the involved parties to the operations; parties became belligerent towards peacekeepers; there was an absence of clear front lines; the United Nations forces were denied freedom of movement; there was lack of legitimate political authority; and it was difficult to determine whether the conflict was domestic or international in nature. Emphasis was also placed on the need to review the traditional distinction between domestic and international concerns, as well as the right to the use of force for self-defence in the context of peacekeeping. It was further suggested that contingency plans should be developed to allow peacekeepers to deter violence directed against them while maintaining their impartiality and the legitimacy of their actions.

78. In response to the concerns expressed by delegations over a possible duplication of work with other bodies and the suggestion to transfer the item in question to the Special Committee on Peacekeeping Operations for its consideration, the sponsor delegation underscored the importance of the issue's being under the consideration of the Special Committee on the Charter and pointed out that the fact that other bodies were dealing with various aspects of peacekeeping could not be used as a justification for not allowing the Committee to fulfil its mandate under the pretext of duplication of work or for transferring consideration of this issue to other forums. The sponsor delegation noted that other bodies were dealing primarily with political and operational aspects of the issue, whereas the Special Committee on the Charter, being a body with highly qualified legal expertise, was best suited to deal with the legal aspects of the matter. It was suggested that the Special Committee on the Charter could hold a joint meeting

with the Special Committee on Peacekeeping Operations for the benefit of both committees. Referring to the 1998 report of the Special Committee on Peacekeeping Operations (A/53/127), the sponsor delegation noted that the secretariat of the Charter Committee should draw the attention of the delegations to such documents before the topic is considered and that any conclusions regarding the possible overlap of the work of the two committees on the item could not be made prior to the conduct of an in-depth analysis of the proposal by the Special Committee on the Charter.

79. Some other delegations pointed out that the consideration of the proposal by the Special Committee on the Charter, which, in accordance with its mandate, was focused on legal elements of peacekeeping, was not duplicating activities of other bodies dealing with other aspects of peacekeeping operations. Support was expressed for strengthening coordination and cooperation of the Committee with other relevant bodies dealing with peacekeeping.

80. Some delegations pointed out that the debate on the item had proved that the proposal in its content and form was not ripe for an in-depth, element-by-element discussion. It was considered that the ideas and formulations of the proposal were ambiguous, confusing and not properly drafted. Moreover, there was no supplementary material prepared by the sponsor delegation to facilitate discussion on the proposal. It was therefore suggested that, owing to lack of support for the proposal, it should not be considered further by the Special Committee. However, views in support of an element-by-element consideration of the proposal within the framework of the Committee were also expressed.

81. The Chairperson of the Special Committee pointed out that the debate on both general and specific aspects of the proposal had already been held by the Committee at its current session in accordance with its mandate. Since the views of delegations were divided, there was no basis to proceed with its paragraph-by-paragraph consideration.

82. In response to the comments concerning the need to improve the text of the proposal and concrete suggestions made in this connection, the sponsor delegation stated that it was ready to take into account suggested proposals, such as the proposal regarding the need to ensure security of the peacekeepers. As regards the request for the supplementary material for the proposal, the sponsor suggested that such material could be provided by the Secretariat. Responding to objections raised to the element-by-element consideration of the proposal, the sponsor delegation noted that the discussion on legal elements and issues presented in the proposal had already begun and that the normal procedure of the Special Committee was to proceed with its element-by-element consideration in the spirit of good will and cooperation, which, in its view, could be the only proper way to fulfil the Committee's mandate. It was later pointed out by the sponsor delegation that, owing to the lack of time at the current session of the Committee, such a thorough consideration of the proposal should begin at its next session.

D. Consideration of the working papers submitted by Cuba at the 1997 and 1998 sessions of the Special Committee entitled "Strengthening of the role of the Organization and enhancing its effectiveness"

83. At the 6th meeting of the Working Group, on 15 April, the delegation of Cuba indicated that it considered the work of the Special Committee a preparation for the Millennium Assembly. The sponsor delegation reaffirmed the content of its proposal (A/AC.182/L.93 and Add.1),[7, 14] which, in its view, could be a useful reference for the work of all delegations in the different bodies of the Organization. The sponsor reiterated that the revitalization of the role of the General Assembly could not be delayed any longer. The delegation of Cuba expressed its willingness to examine the observations to its proposal made by delegations in the past, as well as those that might be made in the future. The sponsor recognized that some aspects of its proposal dealt with topics that were the focus of discussion in other bodies of the Organization, but did not consider them to be a duplication of work carried out in those bodies. The delegation of Cuba expressed its hope that the review of institutional mechanisms could proceed along lines that met the expectations of all Member States.

E. Consideration of the revised proposal presented by the Libyan Arab Jamahiriya with a view to strengthening the role of the United Nations in the maintenance of international peace and security

84. At the 6th meeting of the Working Group, on 15 April, the delegation of the Libyan Arab Jamahiriya indicated that recent events had added to the responsibility of the Special Committee and given more urgency to its work. Regarding its proposal (A/AC.182/L.99),[8] the sponsor delegation expressed its hope that delegations would find the ideas

contained therein to be useful and would build upon them. In its view, said ideas were not repetitive in respect of those being addressed in other forums established by the General Assembly. The sponsor considered that the Committee had the mandate to reaffirm the role of the United Nations and to review the Charter of the Organization, unlike other subsidiary bodies, such as the Open-Ended Working Group on the Question of Equitable Representation on and Increase in the Membership of the Security Council and Other Matters related to the Security Council, which had been given a specific mandate and yet had been unable to achieve concrete results after five years.

85. The delegation of the Libyan Arab Jamahiriya indicated that its proposal drew attention to three elements that were paralysing the Organization in general and especially the Security Council. The Council had failed to fully observe the provisions of the Charter of the United Nations, particularly Article 24. In the light of the fact that the Council had been neither prompt nor effective in fulfilling its mandate under the Charter, the sponsor considered that it was important to reactivate the role of the General Assembly, which had, to some extent, been appropriated by the Council.

86. The sponsor considered it necessary to establish certain rules in cases where the Security Council had failed to perform its mandate by not taking a balanced approach. As a State that had been and continued to be the object of sanctions, the sponsor delegation denounced the existence of a double standard concerning the application of laws and rules. In its view, there were States upon which sanctions simply would not be imposed regardless of the nature of the laws violated by them or the actions committed by them, some of which constituted a threat to international peace and security.

87. The Libyan Arab Jamahiriya indicated that its proposal had been submitted bearing in mind the future of the Organization. Unless the aspect of strengthening the Organization was addressed so that it could protect the rights of the small and the weak States against the powerful ones, the very future of the Organization itself would remain in jeopardy.

88. The sponsor delegation indicated that its proposal was general in nature and that it would proceed to amend it so that the Special Committee might commence its paragraph-by-paragraph consideration.

F. Consideration of the working paper submitted by the Russian Federation and Belarus

89. At the 8th meeting of the Working Group, on 1o April, the representative of the Russian Federation introduced a working paper (A/AC.182/L.104) for the consideration of the Special Committee. He explained that the proposal sought to reaffirm the immutability of provisions of the Charter of the United Nations in the area of peace and security, as well as to strengthen the role of the United Nations. The representative undertook a paragraph-by-paragraph introduction of the proposal, noting that most of the paragraphs contained provisions already found in existing major texts, including the Charter.

90. Under operative paragraph 3, an advisory opinion would be sought from the International Court of Justice as to the legal consequences of the resort to the use of force by States either without the prior authorization of the Security Council or outside the context of self-defence, as well as regarding the role of the United Nations in guaranteeing the system of collective security. In explaining the proposal, the sponsor delegation reiterated its conviction that the Charter must be relied upon to prevent conflicts. As such, obstacles in the operation of the established international security framework should be removed. Furthermore, it noted that the Committee could continue with its priority consideration of the proposal next year and submit its recommendations to the General Assembly at its fifty-fifth session. The delegation of Belarus subsequently indicated to the Special Committee that it wished to be reflected as sponsor of the proposal.

91. With regard to the preambular paragraphs, it was noted that while they included existing consensus language, they did not reflect the context in which that language had originally been adopted. It was suggested therefore that reference should be made to other principles that were not included in the proposal before the Special Committee but that existed in those other texts. While support was expressed for operative paragraphs 1 and 2 by some delegations, others noted that these paragraphs contained only a partial summary of the question of the lawfulness of the use of force. In that regard, it was stated that that approach did not adequately address what was a complex area of international law.

92. With regard to operative paragraph 3, some delegations expressed concern regarding the appropriateness of the consideration of the item by the Special Committee. In this connection, serious misgivings were expressed since the proposal related to several sensitive matters concerning

international peace and security before the Security Council. It was felt that the Council was the proper forum for discussions on the issue and that it was difficult to remove it from the political context. Reference was made to Article 12 of the Charter, under the terms of which the General Assembly was barred from considering matters with which the Council was seized. Hence, the view was expressed that the proposal in operative paragraph 3 was inappropriate as it attempted to circumvent Article 12.

93. The view was also expressed that it was not useful to refer a generic question to the International Court of Justice for an advisory opinion. Furthermore, in the view of some delegations, it was also not clear what answer the Court could give other than that the legal consequences of the use of armed force would depend upon all the circumstances of each case. Doubts were also expressed regarding the usefulness of the submission of the query to the International Court of Justice in the broader context of the debate on humanitarian intervention. The remark was made that the proposal in operative paragraph 3 could be regarded as requiring the International Court of Justice to consider the changing role of the United Nations in regard to the maintenance of international peace and security. Similarly, it was pointed out that the reference to "urgency" in that paragraph suggested that the Court would be required to consider political issues. The observation was also made that it was clear from the brief debate on the working paper in the Working Group that the time was not right to conduct a strictly legal analysis of the issue at hand.

94. Some delegations expressed their strong preference for the removal of the proposal from the agenda of the Special Committee. Other delegations felt that it should not be considered in view of the political situation. Still others proposed that consideration of the proposal be postponed until such time as it would lead to positive results.

95. A view was expressed that it was time to re-examine the principles governing the question of territorial sovereignty, including the prohibition on non-intervention in the domestic jurisdiction of Member States. In this connection, it was suggested that the Charter be amended to allow for humanitarian intervention, and that appropriate guidelines be established to regulate such action. Reference was made in this regard to the 1962 advisory opinion of the International Court of Justice in the *Certain Expenses of the United Nations* case,[15] in which the Court confirmed that under Article 24 the Security Council was primarily but not exclusively responsible for the maintenance of international peace and security.

96. Other delegations expressed strong support for the proposal in the Working Group. As to the appropriateness of the consideration of the proposal in the Special Committee, reference was made to General Assembly resolution 53/106, in which the Assembly requested the Special Committee to continue its consideration of all proposals concerning the maintenance of international peace and security, including proposals that were submitted at the current session of the Committee. The view was also expressed that the proposal did not violate the provisions of Article 12 of the Charter. In this regard, it was pointed out that the preamble to the proposed draft resolution made reference to the competence of the General Assembly under Article 11 to consider the general principles of cooperation in the maintenance of international peace and security.

97. On the point of the political dimensions of the issue at hand, the Working Group was reminded of the prior recourse to the International Court of Justice in the context of the South-West Africa cases, which also involved political considerations. It was noted further that all legal norms were formulated in their context, not in a vacuum. Thus, it was maintained that the prudent and acceptable legal method to clarify the legal position regarding the issue in question was by request for an advisory opinion of the International Court of Justice.

98. Furthermore, the view was expressed that the working paper was timely, as it was aimed at enforcing the principles of the Charter. In this regard, it was observed that developments in the Balkans were serious since they posed an unprecedented threat to the Charter of the United Nations, in particular with regard to Article 2, paragraphs 4 and 7; Article 51; Article 53, paragraph 1; and Article 54.

99. While supporting the proposal, some delegations noted that it could be further refined by being formulated in clearer legal terms. It was noted that if the formulation were improved, greater consensus on the submission of the request for an advisory opinion to the Court might be attained. In this regard, the observation was made that the reference in operative paragraph 3 to "legal consequences" could be interpreted as including political considerations that would not be appropriate for the Court to consider. Instead, it was proposed that that reference be replaced by the word "legality". In response, it was noted that it might best be left up to the Court itself to decide whether the question was couched in sufficiently legal terms to warrant its consideration.

100. In response to the debate on the proposal, the Russian Federation stated that it was motivated by the concern that at the current stage of legal development, the acts in question were in conflict with provisions of the Charter of the United Nations. Reference was made in this connection to the Definition of Aggression, adopted by the General Assembly

by consensus in 1974 (resolution 3314 (XXIX) of 14 December 1974, annex), and to the decision of the International Court of Justice in the *Nicaragua* case,[16] in which the Court made reference with approval to the view of the International Law Commission that "the law of the Charter concerning the prohibition of the use of force in itself constitutes a conspicuous example of a rule in international law having the character of *jus cogens*".[17] Likewise, the attention of the Special Committee was drawn to article 53 of the 1969 Vienna Convention on the Law of Treaties,[18] in terms of which a peremptory norm could be modified only by a subsequent norm of general international law having the same character. Similarly, since, under its Article 103, obligations under the Charter took precedence over other international obligations, in the view of that delegation, the resort to force contrary to the Charter would require its amendment in order to be considered lawful.

101. Following the holding of informal consultations on the proposal, the delegation of the Russian Federation presented an oral report to the Working Group at its 10th meeting, on 20 April. It noted that the informal consultations had revealed that while some delegations supported the proposal, others expressed doubts about the desirability of considering it. Furthermore, some delegations expressed a preference for a more precise legal formulation, and several changes were proposed. On the basis of those discussions, at the same meeting, the sponsors, the Russian Federation and Belarus, placed the following revised version of their initial proposal (A/AC.182/L.104/Rev.1) before the Special Committee for consideration in the future:

> "The Special Committee submits to the General Assembly at its fifty-fourth session for consideration and adoption the following draft resolution:
>
> "*The General Assembly*,
>
> "*Reaffirming* that, pursuant to the Charter of the United Nations, the maintenance of international peace and security and the development of friendly relations and cooperation among States are one of the basic purposes of the Organization,
>
> "*Bearing in mind* the exceptional importance of the Charter of the United Nations for the maintenance of international peace and security and also for the establishment and maintenance of law and order in relations among States and in the world as a whole,
>
> "*Confirming* the principle that States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of States, or in any other manner inconsistent with the purposes of the United Nations, and also that the threat or use of force is a violation of international law and of the Charter of the United Nations,
>
> "*Recalling once again* that no considerations, whether political, economic, military or of any other kind, may be used to justify the threat or use of force in violation of the Charter of the United Nations,
>
> "*Reaffirming again* that wars of aggression are a crime against peace, which gives rise to responsibility under international law,
>
> "*Recalling* the primary responsibility of the Security Council pursuant to the Charter of the United Nations for the maintenance of international peace and security,
>
> "*Referring* to Chapter VIII of the Charter of the United Nations, which acknowledges the role of regional arrangements or agencies in dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action, provided that such arrangements or agencies and their activities are consistent with the purposes and principles of the United Nations,
>
> "*Referring* to Article 11 of the Charter of the United Nations, which authorizes the General Assembly to consider the general principles of cooperation in the maintenance of international peace and security and to make recommendations to the Members of the Organization or to the Security Council or to both,
>
> "*Recalling* that the General Assembly may request the International Court of Justice to give an advisory opinion on any legal question,
>
> "*Referring* to its resolution 53/106 of 8 December 1998, pursuant to which the Special Committee is requested at its session in 1999, *inter alia*, to continue its consideration of all proposals concerning the question of the maintenance of international peace and security in all its aspects in order to strengthen the role of the United Nations and, in that context, to consider other proposals relating to the maintenance of international peace and security

already submitted or which may be submitted to the Special Committee at its session in 1999,

"1. *Affirms* that action by air, sea or land forces of all Members of the United Nations or by some of them for purposes of the maintenance of international peace and security is permissible only on the basis of a decision of the Security Council pursuant to Chapter VII of the Charter of the United Nations or in exercise of the inherent right of individual or collective self-defence pursuant to Article 51 of the Charter;

"2. *Emphasizes* the immutability of the provisions of Article 53, paragraph 1, of the Charter of the United Nations to the effect that, *inter alia*, no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council;

"3. As a matter of urgency and pursuant to Article 96, paragraph 1, of the Charter of the United Nations, requests the International Court of Justice to give an advisory opinion on the following legal questions:

- Under contemporary international law, does a State or group of States have the right to make use of armed force without a decision of the Security Council taken pursuant to Chapter VII of the Charter of the United Nations, except in exercise of the right to individual or collective self-defence pursuant to Article 51 of the Charter?
- Is such use of armed force a violation of the obligations of that State or group of States under the Charter of the United Nations?
- Do States that are not the object of the use of armed force have a right to compensation for damages which they sustained as a consequence of such use of armed force inasmuch as they were unable fully to enjoy their rights under contemporary international law, particularly the Charter of the United Nations?"

102. Following the introduction of the revised proposal, the view was reiterated that it should not be considered further as doing so was not appropriate under Article 12 of the Charter, nor was its referral to the International Court of Justice warranted. On the other hand, it was disputed in the Working Group whether the consideration of the proposal by the Committee would impinge on the competence of the Security Council in the matter. It was also noted that, while there had been informal consultations on the content of the proposal, they had been conducted without prejudice to the position of some delegations that the proposal as such was neither useful nor helpful. Some delegations that had opposed the working paper and the draft resolution stated that their views had not changed. Other delegations that were in favour of the proposal also stated that their view had remained unchanged.

103. While some delegations reiterated their strong preference for the removal of the proposal from the agenda of the Special Committee, others emphasized that the proposal was extremely important and timely. The General Assembly was entitled to seek an advisory opinion from the International Court of Justice on the legal issues relating to the interpretation and implementation of the Charter. The point was made that the decision as to whether the Committee should continue its consideration of the topic at its next session was to be taken by the Assembly and not by the Committee itself.

104. It was also noted that in paragraph 4 (a) of its resolution 53/106, the General Assembly made it possible for the Special Committee to consider any new proposals concerning the question of the maintenance of international peace and security in all its aspects in order to strengthen the role of the United Nations. The view was expressed, however, that Assembly resolutions did not constitute a carte blanche for bringing in material not appropriate for the consideration of the Special Committee.

Chapter IV
Peaceful settlement of disputes

A. Consideration of the revised proposal submitted by Sierra Leone, entitled "Establishment of a dispute prevention and early settlement service"

105. At the 9th meeting of the Working Group, on 19 April 1999, the delegation of Sierra Leone referred to its proposal entitled "Establishment of a dispute prevention and early settlement service",[9] and reported to the Working Group on the results of informal consultations held during the current session of the Special Committee on the proposal. It noted that an informal paper had been circulated by the delegation of the United Kingdom of Great Britain and Northern Ireland during those consultations containing a further complementary proposal.

106. It was explained that the informal paper arose as a response to the concern expressed by some delegations at the previous session of the Special Committee regarding the complexity of the Sierra Leone proposal. Hence, emphasis was placed on existing methods of dispute prevention, and States were encouraged to make greater use of such mechanisms. In this regard, reference was made, by way of example, to the Panel for Inquiry and Conciliation established by the General Assembly in its resolution 268 D (III) of 28 April 1949; the register of experts in legal and other fields prepared by the Secretary-General in response to General Assembly resolution 2329 (XXII) of 18 December 1967; the Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security, which provided that the Secretary-General should prepare and update lists of experts in various fields who would be available for fact-finding missions (see Assembly resolution 46/59 of 9 December 1991, annex, sect. II, para. 14); and the lists of conciliators and arbitrators established under annexes V and VII to the United Nations Convention on the Law of the Sea,[19] respectively. It was noted, however, that the first few examples, which were included in the text to facilitate discussions, were dated, and that there might exist other mechanisms that could be more appropriately referred to in the text. Furthermore, it was noted that the two proposals could be effectively combined by emphasizing the use of existing mechanisms or by requesting that the Secretary-General create new lists of experts and incorporating elements of the Sierra Leone proposal, such as the aspect of dispute prevention. While this approach was supported in the Working Group, it was noted that the optimal solution may lie somewhere between the two proposals.

107. At the 10th meeting of the Working Group, on 20 April, support was expressed for the incorporation of the informal paper into the report of the Special Committee so as to facilitate further consideration either in the Sixth Committee or at future sessions of the Special Committee. The informal paper read as follows:

"Elements for a resolution on dispute prevention and settlement

"*The General Assembly*,

"*Recalling* Article 33 of the Charter of the United Nations, and deeming it desirable to assist the compliance by Member States with their obligation under Article 33 first of all to seek a solution of their disputes by peaceful means of their choice,

"*Recalling with appreciation* the work done by the delegation of Sierra Leone during recent sessions of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization to encourage States to focus on the need to settle peacefully disputes between States at an early stage before they are likely to cause a threat to international peace and security,

"*Emphasizing* the need to promote the peaceful settlement of disputes,

"*Recalling* its resolution 268 D (III) of 28 April 1949 on the creation of a panel for inquiry and conciliation, the annex to which contains articles relating to the composition and use of the Panel for Inquiry and Conciliation,

"*Recalling also* its resolution 2329 (XXII) of 18 December 1967, in which it requested the Secretary-General to prepare a register of experts in legal and other fields, whose services States parties to a dispute might use by agreement for fact-finding in relation to the dispute,

"*Recalling* its resolution 50/50 of 11 December 1995, the annex to which contains the United Nations Model Rules for the Conciliation of Disputes Between States,

"1. *Reaffirms* the duty of States to find peaceful means by which to settle any dispute before it is likely to cause a threat to the maintenance of international peace and security, and encourages States parties to any dispute to endeavour to settle it as early as possible;

"2. *Notes* the wide variety of methods for the peaceful settlement of disputes currently available to States, both inside and outside the United Nations system;

"3. *Urges* States parties to any dispute to make the most effective use of existing methods of dispute settlement;

"4. *Reminds* States parties to any dispute of the possibility of making use of the Panel for Inquiry and Conciliation set up by the General Assembly in its resolution 268 D (III) as one means of complying with their obligations under Article 33 of the Charter of the United Nations;

"5. *Encourages* States parties to any dispute to make use of the experts whose names appear, for the purpose of providing fact-finding services, in the register set up by the Secretary-General pursuant to paragraph 4 of its resolution 2329 (XXII);

"6. *Requests* the Secretary-General to take such steps as are necessary to encourage States to designate suitably qualified persons who are willing to serve on the Panel for Inquiry and Conciliation or to have their names included in the register referred to in paragraph 5 above."

108. At the same meeting, a formal request was made that the Secretariat prepare an updated assessment regarding the status of the various mechanisms at the disposal of the Secretary-General in the context of dispute prevention and settlement, which should be submitted to the Sixth Committee in connection with its consideration of the report of the Special Committee. This would entail a review of existing mechanisms with a view to assisting delegations in the consideration of the proposal by Sierra Leone in the light of the additional proposal by the United Kingdom. General support was expressed for this suggestion. Some delegations preferred an in-depth analysis, including an evaluation of the efficacy of the mechanisms at the disposal of the Security Council, the General Assembly or the Secretary-General. Others noted that substantial work in this area had already been undertaken, and expressed a preference for a more concise list of mechanisms, leaving it up to Member States to draw their own conclusions regarding the efficacy of those mechanisms.

B. Consideration of the working paper entitled "Revised version of the amendments to the Statute of the International Court of Justice submitted by Guatemala to the Special Committee in 1997 and slightly modified in 1998"

109. At the 1st meeting of the Working Group, on 12 April, the delegation of Guatemala introduced a revised proposal entitled "New proposal submitted by Guatemala for the amendment of the Statute of the International Court of Justice to extend its competence with respect to contentious matters to disputes between States and intergovernmental organizations", contained in the annex to its explanatory memorandum (A/AC.182/L.103 and Corr.1), which read as follows:

"A. Article 34, paragraph 1, *should read*:

'1. Only States and, under the conditions laid down in Article 36A, the United Nations or any other public international organization established by a treaty registered in accordance with Article 102 of the Charter of the United Nations, may be parties in cases before the Court.'

"B. *Insert* in Article 36, paragraph 1, immediately after 'Court', the words 'to deal with disputes between States'.

"C. *Insert* an Article 36A *reading*:

'Article 36A

'1. The Court shall be competent to deal with any dispute between a State or a number of States, on the one hand, and a public international organization, on the other, where the constituent instrument of the organization confers competence on the Court for such purpose and the dispute is one of those provided for in the relevant provisions of the instrument.

2. The competence of the Court shall extend to all disputes between a State or a number of States, on the one hand, and a public international organization, on the other, which are referred to it by the parties. It shall also encompass, with respect to such disputes, all matters specifically provided for in treaties to which one or a number of States and a public international organization are parties.

3. In the event of a dispute as to whether the Court has jurisdiction under this Article, the matter shall be settled by the decision of the Court.'

"D. *Insert* an Article 36B *reading*:

'Article 36B

'In order that competence may be conferred on the Court, under Article 36A, paragraph 1 or 2, with respect to a dispute to which a public international organization is a party, such organization must have deposited with the Registrar of the Court a declaration by which it accepts the jurisdiction of the Court, in accordance with the terms and subject to the conditions of the Statute and the Rules of the Court, to settle the dispute referred to it or to exercise its competence under the provisions of the relevant treaty or convention. In the declaration the organization shall also undertake to comply in good faith with the decision or decisions of the Court concerning the dispute referred to it or the matter with which it deals by virtue of the relevant treaty or convention, and to accept the obligations of a Member of the United Nations under Article 94 of the Charter of the United Nations.'

"E. *Insert* an Article 36C *reading*:

'Article 36C

'In any of the cases provided for in Article 36A, neither Article 31, paragraphs 2, 3, 4 and 6, nor, with respect to a public international organization which is a party to the dispute, Article 34, paragraph 3, shall apply.'

"F. In Article 53, paragraph 2, Article 36A should be mentioned, as well as Articles 36 and 37.

"G. *Insert* in Article 62, paragraph 1, immediately after the word 'State': ', the United Nations or another public international organization to which the Court is open under Article 34, paragraph 1.'

"H. In Article 63, paragraph 1, *replace* the words 'States other than those concerned in the case are parties' *by* 'States other than those concerned in the case, the United Nations or other public international organizations to which the Court is open under Article 34, paragraph 1, are parties ...'. At the end of the paragraph, *replace* the words 'all such States' by 'all such States and public international organizations (including the United Nations) to which the Court is open under Article 34, paragraph 1.'"

110. The sponsor delegation pointed out that the revised proposal, which replaced in its entirety the one that it had submitted to the Special Committee in 1997 and 1998, was a workable one. The same delegation recalled that in 1971, when the Secretary-General consulted States on how to enhance the efficiency of the International Court of Justice, both the United Kingdom and the United States of America had, in principle, favoured the idea of extending the Court's jurisdiction along the lines recommended by the sponsor (see A/8382, para. 205, and A/8382/Add.1, para. 13). In addition, 16 other States had tended to share the same view.

111. Noting that, in comparison to 1971, the Court indeed had a heavy workload, the delegation of Guatemala was nevertheless of the view that this did not constitute a valid argument for opposing its proposal, since there was no certainty that the situation would not change. Moreover, the sponsor expressed the view that the possible delays that parties to a dispute might have to face when bringing a matter before the Court would not necessarily deter them from doing so. Furthermore, the sponsor delegation added that, although the number of intergovernmental organizations had increased considerably since 1971, there had been few disputes between them and States.

112. As to the argument that the proposal would require an amendment to the Charter of the United Nations, the sponsor observed that, notwithstanding the provisions of the Charter referring to the Court, amending the Statute of the Court, for practical and substantive purposes, was not the same as amending the Charter proper. The main argument put forward by the sponsor delegation was that the Court functioned separately and independently from the other organs of the United Nations, the functions of the latter being fundamentally different from those of the Court.

113. The sponsor delegation proposed that the Special Committee recommend to the General Assembly that it send States an abbreviated version of the questionnaire contained in the report of the Special Committee of its 1998 session[10] and that it consult the Court on the proposal of Guatemala.

114. While thanking the sponsor delegation for the revised version of the proposal, some delegations noted that the political will to proceed with said proposal had not manifested itself in the Special Committee. The view was expressed that the proposal was feasible technically but not politically, at least for the time being. It was felt that the gains to be obtained from the proposal did not justify the risky, lengthy and complex work involved in reforming the

Charter of the United Nations and the Statute of the Court. Furthermore, it was noted that the General Assembly in paragraph 4 (e) of its resolution 53/106, had clearly indicated that whatever action might be taken as a result of the consideration of the matter would have no implications for any changes in the Charter of the United Nations or in the Statute of the International Court of Justice.

115. It was also stressed that there was no practical need or consensus for reforming the Charter of the United Nations or the Statute of the Court along the lines of the proposal. The numerous existing dispute settlement mechanisms for disputes between States and intergovernmental organizations had proved to be adequate, and some of these already included possible recourse to the advisory jurisdiction of the Court. The point was made that even if problems for the resolution of such disputes were to arise, this would not necessarily require amendments to the Charter of the United Nations or the Statute of the Court.

116. At the 4th meeting of the Working Group, on 14 April 1999, the delegation of Guatemala withdrew the proposal, as well as the two recommendations suggested in paragraph 113 above, observing that its adoption in the foreseeable future appeared most unlikely, while reserving its right to reintroduce it once more auspicious prospects for the adoption of the proposal arise. The delegation of Guatemala also noted that the proposal's inclusion in the official records of a body of the Organization and the exchange of views that had ensued would constitute a useful contribution to the work of those favouring the extension of the Court's jurisdiction along the lines suggested.

C. Practical ways and means of strengthening the International Court of Justice while respecting its authority and independence

117. The question was considered by the Working Group at its 9th and 10th meetings, on 19 and 20 April. The representative of Mexico indicated that, in the light of the increased recourse to the International Court of Justice by States, the pressing need to ensure that the Court was provided with the financial resources to adequately carry out its functions had motivated it to bring the matter to the attention of the Special Committee. Recognizing the efforts undertaken by the Court to deal with the issue (see A/53/326 and Corr.1, chap. II), the representative of Mexico was of the view that the Special Committee could lend its support to those efforts. The delegation pointed out that if the work of the Court continued to increase, unless adjustments were made, the effectiveness of the principal body of the United Nations could be seriously affected. Furthermore, the representative indicated that, although budgetary matters did not fall within the purview of its mandate, the Special Committee could nonetheless bring to the attention of pertinent bodies the need to address the request of the Court for an increased budget for the biennium 2000–2001. In order to facilitate consideration of the subject, the delegation of Mexico submitted a working paper (A/AC.182/L.105).

118. Some delegations expressed their support for the proposal to request the competent committees and bodies of the Organization to give careful consideration to the demands of the Court for additional budgetary resources. Delegations expressed the view that the growth in the resources of the International Court of Justice was not proportional to its significantly increased workload. Therefore, the view was expressed that in the forthcoming biennial budget, the legitimate request of the Court should be duly honoured. It was noted that, on 27 October 1998, the Chairman of the Sixth Committee had addressed a letter to the Chairman of the Fifth Committee in which he drew attention to the comments of the Court contained in the report of the Secretary-General on the consequences that the increase in the volume of cases before the Court had on its operation (A/53/326 and Corr.1). The secretariat of the Special Committee indicated that the Bureau of the Fifth Committee had sent a copy of the letter to the Advisory Committee on Administrative and Budgetary Questions, which would consider the budget of the Court for the biennium 2000–2001 in June 1999. In this regard, the hope was expressed that the discussion in the Advisory Committee might lead to tangible results that would provide the Court with sufficient means to discharge its functions adequately.

119. The point was made that the delegations in the Special Committee could also do more to further the request of the Court for additional resources by informally expressing their support to the delegations in the Fifth Committee.

120. The view was expressed that another way to strengthen the International Court of Justice would be to encourage more States to accept the compulsory jurisdiction of the Court, since only 62 States had done so.

121. In the context of the discussion, the Special Committee was of the view that the request of the International Court of Justice for an increased budget merited serious consideration. Nevertheless, since the adoption of decisions on budgetary issues was not within the competence of the Special Committee, it highlighted the urgency of the issue and strongly welcomed that fact that it would be considered by the Advisory Committee on Administrative and Budgetary Questions and the Fifth Committee.

122. As a result of its deliberations, at its 231st meeting, on 23 April, the Special Committee recommended to the General Assembly for its consideration and adoption a draft resolution, which read:

"*The General Assembly*,

"*Recalling* that the International Court of Justice is the principal judicial organ of the United Nations,

"*Noting* an increase in the recourse to the Court by States and the effects of such an increase on its operation,

"*Recalling* its resolution 53/106 of 8 December 1998, by which it requested the Special Committee to consider practical ways and means of strengthening the International Court of Justice,

"*Bearing in mind* the comments and observations submitted by the Court and by States on the consequences that the increase in the volume of cases before the Court has on its operation (A/53/326 and Corr.1 and Add.1),

"1. *Expresses its appreciation* to the Court for the measures adopted to operate an increased workload with maximum efficiency (ibid.);

"2. *Invites* the Court to keep its working methods under periodic review and to adopt additional measures aimed at expediting its proceedings;

"3. *Invites* States that appear before the Court to consider favourably the guidance offered by the Court in paragraph 3 of the annex to the report of the Secretary-General containing the comments and observations of the Court (A/53/326 and Corr.1), and to adopt, whenever possible, any other measure that may help to expedite the proceedings."

Chapter V
Proposals concerning the Trusteeship Council

123. At its 10th meeting, on 20 April 1999, the Working Group of the Special Committee considered proposals concerning the Trusteeship Council. The delegation of Malta, in its introductory statement, recalled that although the issue had been on the agenda of the Committee for three years, divergent views regarding the role of the Trusteeship Council remained unchanged, namely, to have the Council abolished, since its mandate has been fulfilled; to retain it since its existence at present does not entail any financial implications; or, as advocated by Malta, to have it reconstituted as a guardian and trustee of the global commons or the common heritage of mankind. It was explained that the proposed new role for the Council would envisage the establishment of an oversight mechanism relative to the global environment and common concerns, such as the climate, resources of the sea and the seabed, outer space and extraterritorial zones. Such a mechanism would promote a coordinated approach to the concept of the common heritage of mankind, guaranteeing the elimination of institutional fragmentation and duplication of activities of various bodies in relevant areas. It was stated that the proposal merited further discussion and in-depth consideration because, in the view of its sponsor, it had been endorsed by the Secretary-General in the context of the reform of the United Nations, in particular in document A/52/849 entitled "A new concept of trusteeship".

124. Some delegations reiterated their views in support of the proposal by Malta. In this connection, the proposal was made that the sponsor offer practical suggestions and consolidated ideas regarding the possible new responsibilities of the Council. The sponsor was also invited to clarify the issue of the composition of the proposed new body since the present composition of the Trusteeship Council was not adequate for its new role. Clarification was also sought on the relationship with other United Nations bodies active in relevant areas in the overall context of the reform of the Organization so as to avoid any duplication of work.

125. Some other delegations expressed reservations as regards the proposal for the new role of the Trusteeship Council as a guardian of the common heritage of mankind. It was underscored that the concept of the common heritage itself was a complex and controversial issue. Concerns were also raised regarding a possible duplication of work carried out by various other United Nations institutions in this field. It was further noted that the coordination of work of other forums dealing with many aspects of the common heritage of mankind did obliterate the need for a new oversight mechanism. A cautious approach to assigning a new role to the Council was considered necessary since any such change in the mandate of the Council would entail revision of the Charter of the United Nations.

126. Views in support of the abolition of the Trusteeship Council were reiterated by some delegations. In this connection, it was noted that such abolition would also involve amending the Charter of the United Nations and would have to be carried out in the overall context of United Nations reform.

127. Some other delegations expressed the opinion that the abolition of the Trusteeship Council, entailing amendments to the Charter of the United Nations, would be unnecessary at the present stage since its existence had no financial implications for the Organization. The point was also made that a need for trusteeship functions might arise in the future.

128. Responding to various suggestions and observations made during the debate, the sponsor delegation noted that at the present stage of discussion there was no consensus regarding the basic concept of the proposal. However, if authorized by the Committee, the delegation of Malta would be ready for an in-depth discussion not only on the underlying principles of the proposal but also on practical aspects of its future implementation.

Chapter VI
Identification of new subjects, assistance to working groups on the revitalization of the work of the United Nations and coordination between the Special Committee and other working groups dealing with the reform of the Organization

A. Identification of new subjects

129. Some delegations were of the view that there was no compelling need to add new topics to the Special Committee's agenda at the current juncture, bearing in mind the need for economy and making the best use of the limited resources available. It was suggested that a comprehensive exchange of views should be conducted prior to adding any new topics to the Committee's agenda in order to ascertain the substantive merits of new proposals as well as to establish whether they would enjoy sufficient political support. It was suggested that such new proposals should be submitted in the form of action-oriented documents clearly indicating a possible form of the final outcome of deliberations.

130. However, objections were raised to suggestions not to introduce new topics into the Special Committee's agenda. A point was made that such suggestions were not consistent with the provisions of subparagraph 4 (a) of General Assembly resolution 53/106 and did not provide for the need to take into account important new issues that might arise in the future. The view was also expressed that important issues concerning the Charter of the United Nations should continue to be considered by the Committee and that the current session had witnessed an increased interest in the work of the Committee owing to the introduction of new items.

B. Assistance to working groups on the revitalization of the work of the United Nations and coordination between the Special Committee and other working groups dealing with the reform of the Organization

131. Some delegations favoured close contacts, including holding joint meetings and exchanging information, between the Special Committee and other bodies of the Organization dealing with various practical aspects of the issues before the Committee. In their view, such contacts would help to avoid duplication of work and promote a mutually complementary way of carrying out activities under the respective mandates of the bodies concerned. The role of the Chairpersons of the Committee was considered important in such contacts and consultations. A suggestion was made that, before the next session of the Committee, the Secretariat could prepare a summary of the relevant work of other bodies active in the area of the United Nations reform so as to improve the coordination of activities.

132. Preference for a different approach to eliminating duplication has been also expressed. In this regard, a suggestion was made that the Special Committee refer those issues that overlap with the work of other bodies of the United Nations to other appropriate bodies. It was also proposed to seek the views of such other bodies on the advisability of consideration by the Committee of issues relevant to the work of such bodies. Views against such an approach were also voiced during the debate. In particular, it was said that other bodies did not deal with legal questions.

C. Working methods of the Special Committee

133. Various suggestions were made regarding possible ways of improving the working methods of the Special Committee and enhancing its efficiency. In this regard, emphasis was made concerning the need to avoid duplication and repetition in the work of the Committee. Some delegations suggested that, given the number of proposals currently before the Committee, it would be preferable to focus the work of the Committee on those proposals. It was

further suggested that clear priorities in the consideration of those proposals be established. As regards the introduction of a new proposal, it was considered necessary first to assess a practical need for such a proposal and to establish whether there was sufficient agreement to undertake an in-depth consideration of the proposal. A point was made that such evaluation could be facilitated by a more active role of sponsors, who, in cooperation with the "friends of the sponsor", could prepare and circulate, during the sessions of the General Assembly, relevant informal papers so as to facilitate the debate in the Sixth Committee. Preparation of criteria for presentation and discussion of new initiatives was also suggested.

134. As regards the allocation of time for the consideration of various topics, it was suggested that a deadline or a time-frame for discussion of each proposal during the Special Committee's sessions be established, taking into account the nature of the topics on the agenda of the Committee. A proposal was made to study the possibility of establishing a decision-making mechanism so as to avoid protracted debate on proposals lacking sufficient support. It was also suggested that a cut-off mechanism be introduced in order to prevent continued discussion of topics for many years without any concrete results and to avoid duplication of discussion in other bodies. Views against such a mechanism were voiced. The view was also expressed that the proposed measures would have significantly reduced the effectiveness of the Committee and would have damaged its authoritativeness and influence. It was further noted that withdrawing proposals for which no consensus was likely to be achieved in the foreseeable future was conducive to the effective work of the Committee.

135. A shorter duration, of five to eight days, of the next session of the Special Committee was also suggested. It was observed that shortening the session would not negatively affect the consideration of issues before the Committee if proper utilization of time and conference services is ensured. It was remarked that five working days could be sufficient for substantive discussions, and three days could be allocated to the preparation and consideration of the report of the Committee. The point was made, however, that the duration of the session should be determined taking into account the nature of each topic on the Committee's agenda and the time needed for its consideration.

136. With a view to shortening the time spent for the adoption of the report of the Special Committee, a proposal was made to follow the practice of the Ad Hoc Committee established by General Assembly resolution 51/210, which adopts a slender procedural report through paragraph-by-paragraph discussion but does not discuss an informal summary of the debate in the Working Group of the Ad Hoc Committee, annexed to the report. Such a procedure could allow the Special Committee to reduce the time required for the adoption of the report to one meeting, instead of the two or three meetings currently needed. Time thus saved for the consideration of the report could then be utilized for conducting more consultations, with increased transparency for the recommendations of the Committee to the Assembly.

137. The view was expressed that the Special Committee's existing procedure for considering its reports was quite satisfactory and that there was no need to obstruct this procedure, which had been tested through practice. It was also stated that, in accordance with the Committee's past practice, which had proven its effectiveness, an in-depth, paragraph-by-paragraph consideration of proposals should be allowed to proceed if a request for such consideration is made. The point was made that shortening the duration of the Committee's session or of the consideration of proposals on its agenda was unacceptable since it would be a diversion from the practice established for the work of subsidiary bodies of the General Assembly and would not allow an in-depth discussion of important proposals before it, thus negatively affecting the quality of the Committee's work. It was noted that the effectiveness of the Committee could be enhanced by focusing its work on key issues of its mandate, maintaining democratic procedures and the spirit of mutual respect and cooperation in its work, rather than by artificially shortening its sessions. Such limitations could not be justified since they would affect the right of Member States of the Committee, whose number had dramatically increased, to participate in the Committee's work. It was therefore suggested to extend the duration of the Committee's sessions to four or five weeks in order to allow a thorough consideration of important and complex issues pertaining to the progressive development and codification of international law, as mandated by the Charter of the United Nations and the General Assembly.

138. The view was expressed that with regard to the proposals being considered by the Committee for two or three years, the Secretariat could be invited to assist the Special Committee by identifying those provisions on which no agreement had been reached so that deliberations by the Committee might be conducted in a focused and efficient manner.

139. In the course of the discussion, a number of suggestions received support, in particular to start the meetings of the Special Committee strictly on time so as to avoid wasting the limited resources of the Organization; to submit proposals well in advance and in the form of action-oriented texts to allow their in-depth study by delegations,

taking into account the time necessary for preparatory work, which in some cases may require extensive and protracted diplomatic contacts; to prepare short-, medium- or long-term programmes for the Committee, possibly following the example of the International Law Commission; and to continue holding the Committee's sessions in spring since this practice had proven its usefulness in allowing all delegations to prepare for and participate effectively in the work of the Committee.

140. The Special Committee decided to consider ways and means of improving the procedure for the adoption of its report at its next session, including possible changes to the nature of the report.

Notes

[1] *Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 33* (A/36/33), para. 7.

[2] Ibid., *Fifty-second Session, Supplement No. 33* and corrigendum (A/52/33 and Corr.1), para. 29.

[3] Ibid., *Fifty-third Session, Supplement No. 33* (A/53/33), para. 45.

[4] Ibid., *Fifty-first Session, Supplement No. 33* (A/51/33), para. 128.

[5] Ibid., *Fifty-second Session, Supplement No. 33* and corrigendum (A/52/33 and Corr.1), para. 58.

[6] Ibid., *Fifty-third Session, Supplement No. 33* (A/53/33), para. 73.

[7] Ibid., para. 84.

[8] Ibid., para. 98.

[9] Ibid., para. 105.

[10] Ibid., para. 140.

[11] S/1999/92.

[12] *Official Records of the General Assembly, Fifty-third Session, Supplement No. 33* (A/53/33), paras. 48–50.

[13] See E/C.12/1997/8.

[14] *Official Records of the General Assembly, Fifty-second Session, Supplement No. 33* and corrigendum (A/52/33 and Corr.1), para. 59.

[15] 1962 *ICJ Reports*, p. 151 at p. 163.

[16] *Case Concerning Military and Paramilitary Activities in and against Nicaragua*, 1986 *ICJ Reports*, p. 14 at p. 100, para. 190.

[17] *Yearbook of the International Law Commission*, 1966, vol. II, p. 247, para. (1) of commentary to article 50 (draft articles on the law of treaties).

[18] United Nations *Treaty Series*, vol. 1155, p. 331.

[19] United Nations *Treaty Series*, vol. 1833, p. 3.

99-13883 (E) 290699